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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARSHALL LOSKOT, Plaintiff, v. PITAMBER RAMESH, individually and dba BEST WESTERN HERITAGE INN, and DOES ONE to FIFTY, inclusive, Defendants.) Case No. C-07-0116 CW) Civil Rights) COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES: DENIAL OF CIVIL RIGHTS OF A DISABLED PERSON IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990; VIOLATION OF CALIFORNIA'S CIVIL RIGHTS STATUTES) JURY TRIAL REQUESTED)

Plaintiff **MARSHALL LOSKOT** complains of defendants **PITAMBER RAMESH**, **individually and dba BEST WESTERN HERITAGE INN**, and **DOES ONE to FIFTY, inclusive**, and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 for violations of the **Americans with Disabilities Act of 1990**, (42 **USC** § 12101, et seq.) Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same facts, are also brought under California law, including, but not limited to, violations of **California Health & Safety Code** § 19955, et seq., including **California Code of Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

2. Venue is proper in this court pursuant to 28 **USC** § 1331(b) and is founded on the fact that the real property which is the subject of this action is located in this district, at Concord, Contra Costa County, California, and that Plaintiff's causes of action arose in this district.

INTRODUCTION

3. **HERITAGE INN** is located at 4600 Clayton Road Concord, Contra Costa County, California. Said motel is owned and operated by defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive.**

Defendants **PITAMBER RAMESH**, and **DOES ONE to FIFTY, inclusive**, operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

1. The curb ramp at the corner of the walkway in front of the office is not really a complying curb ramp, but rather just a depressed portion of the walkway that was flush with the driveway for only about 18". It does not have a complying width, main slope, side slope, rear landing, detectable warnings, or a grooved border as required by California Title 24 §1127B.5, ADAAG Section 4.7. Disabled customers not arriving by car would have to travel through traffic areas to reach a complying ramp located between the accessible parking spaces.

2. There is no van-accessible parking space with an 8'-0" wide access aisle in violation of California Title 24 §1129B.4.2, ADAAG 4.1.2(5)(b).

3. Two of the accessible guest room doors (Nos. 166 and 168) have thresholds greater than 1/2" in height exceeding this maximum allowed by California Title 24 §1133B.2.4.1, ADAAG 4.13.8.

4. The laundry room:

(a) Door (No. 162) has a threshold greater than 1/2" in height in violation of California Title 24 §1133B.2.4.1, ADAAG 4.13.8:

(b) has grab and twist light and heat pump switches in violation of California Title 24 § 1117B.6.4. ADAAG 4.27.1;

(c) has no accessible machines as they are up against the wall with no accessible space and no assistive devices were available in violation of California Title 24 §1115A.1.

5. A community meeting room called the "Clayton Room" has two doors with thresholds greater than 1/2" in height in violation of California Title 24 §1133B.2.4.1, ADAAG 4.13.8.
6. There does not appear to be a pool lift at the pool in violation of California Title 24 §1104B.4.3.4.
7. The latches on the gates of the pool area are not accessible and a person in a wheelchair can get locked in the pool area in California Title 24 §1133B.1.1.1.4, ADAAG 4.13.3, 4.13.9.
8. If indeed there are 4 rooms designated as accessible rooms at the motel, this number would be less than the 7 accessible rooms (5 regular accessible rooms plus 2 additional accessible rooms with roll-in showers) required by California Title 24 Table 11B-3, ADAAG 9.1.2.
9. Designated accessible Room 103 does not have an accessible roll-in shower, and it is unknown if any of the rooms has a roll-in shower, in possible violation of California Title 24 Table 11B-3, ADAAG 9.1.2, which would require at least two rooms with a roll-in shower.
10. In the designated accessible Room No. 103, the bathroom door did not have the required 60" space on the side of the door swinging into the bathroom (52" actual), in violation of California Title 24 §1133B.2.4.2, ADAAG 4.13.6.
11. In the designated accessible Room No. 103, there are no grab bars around the inside of tub/shower in violation of California Title 24 §1115B.6.1.3, ADAAG 4.20.4.
12. In the designated accessible Room No. 103, the tub/shower seat is not mounted to the tub surface in violation of California Title 24 1115B.6.1.2, ADAAG 4.20.3.
13. The doors to accessible building entries and common areas are not identified with the International Symbol of Accessibility in violation of California Title 24 1117B.8.1.2, ADAAG 4.1.2(7)(c).
14. One-half of the breakfast bar is too high to be accessible in violation of California Title 24 § 1122B, ADAAG 5.2.
15. Designated accessible Room 168 has only 24" clearances between the bed and the bathroom entrance preventing entrance into the bathroom in violation of California Title 24 §1111B.4.3, ADAAG 4.3, 9.1.2, 9.2.2(2).
16. Designated accessible Room 168 has no grab bars in the shower in violation of California Title 24 §1115B.6.1.3, ADAAG 4.17.3, 4.21, 4.26.

1 The above barriers interfered with Plaintiff's access of the facilities and continue to deter
 2 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **MARSHALL LOSKOT** suffers
 3 violations of his civil rights to full and equal enjoyment of goods, services, facilities and
 4 privileges, and has and will suffer embarrassment and humiliation.

5 **FACTUAL ALLEGATIONS**

6 4. Plaintiff **MARSHALL LOSKOT** is, and at all times relevant to this Complaint is, a
 7 "physically handicapped person, "physically disabled person," and a "person with a disability,"
 8 as these terms are used under California law and under federal laws including, but not limited
 9 to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms "physically
 10 handicapped person," "physically disabled person," and a "person with a disability" will be used
 11 interchangeably throughout this Complaint.) Plaintiff is a "person with a disability," as defined
 12 by all applicable California and United State's laws. Plaintiff **MARSHALL LOSKOT** is severely
 13 limited in the use of his legs.

14 5. Defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive**, at all
 15 times relevant herein were and are the owners and operators; lessors and/or lessees,
 16 franchisers and/or franchisees, of public facilities known as the "**HERITAGE INN**," located at
 17 Concord, Contra Costa County, California, subject to the requirements of California state law
 18 requiring full and equal access to public facilities pursuant to ***California Health & Safety Code***
 19 § 19955, et seq., ***California Civil Code*** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and
 20 subject to Title III of the ***Americans with Disabilities Act of 1990***, and to all other legal
 21 requirements referred to in this Complaint. Plaintiff does not know the relative responsibilities
 22 of defendants in the operation of the facilities herein complained of, and alleges a joint venture
 23 and common enterprise by all such defendants.

24 6. Defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive**
 25 (hereinafter alternatively referred to collectively as "defendants"), at all times relevant herein
 26 were and are owners, possessors, builders and keepers of the "**HERITAGE INN**" in Concord,
 27 Contra Costa County, California.

28 7. Defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive** are the

1 owners and operators of the subject "**HERITAGE INN**" at all times relevant to this Complaint.
2 Plaintiff is informed and believes that each of the defendants herein is the agent, employee or
3 representative of each of the other defendants, and performed all acts and omissions stated
4 herein within the scope of such agency or employment or representative capacity and is
5 responsible in some manner for the acts and omissions of the other defendants in legally
6 causing the damages complained of herein, and have approved or ratified each of the acts or
7 omissions of each other defendant, as herein described.

8. Plaintiff **MARSHALL LOSKOT** does not know the true names and capacities of
9 defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive**, their business
10 capacities, their ownership connection to the property and business, nor their relative
11 responsibilities in causing the access violations herein complained of, and alleges a joint
12 venture and common enterprise by all such defendants. Plaintiff is informed and believes that
13 each of the defendants herein, including DOES ONE to FIFTY, inclusive, is the agent,
14 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
15 joint venturer, partner, and associate, or such similar capacity, of each of the other defendants,
16 and was at all times acting and performing, or failing to act or perform, with the authorization,
17 consent, permission or ratification of each of the other defendants, and is responsible in some
18 manner for the acts and omissions of the other defendants in legally causing the violations and
19 damages complained of herein, and have approved or ratified each of the acts or omissions of
20 each other defendant, as herein described. Plaintiff will seek leave to amend this Complaint
21 when the true names, capacities, connections and responsibilities of defendants **PITAMBER**
22 **RAMESH, and DOES ONE to FIFTY, inclusive**, are ascertained.

23. Plaintiff is informed and believes that all named defendants, including DOES
24 ONE to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively, aided
25 and abetted one another in the performance of the wrongful acts hereinafter alleged.

26. Defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive**, are the
27 owners and operators of the "**HERITAGE INN**," located at Concord, Contra Costa County,
28 California. This motel, including, but not limited to, parking spaces and access aisles and

1 access routes, are each a part of a "public accommodation or facility" subject to the
2 requirements of **California Health & Safety Code** § 19955, et seq., and of **California Civil**
3 **Code** §§ 51, 52(a), 54, 54.1, et seq. On information and belief, this "HERITAGE INN" motel
4 was constructed after 1990, which has subjected the "HERITAGE INN" motel to handicapped
5 access requirements per **California Health & Safety Code** § 19959, and applicable portions
6 of **California Code of Regulations**, Title 24, (the State Building Code).

7 11. On or about May 10-11, 2006, Plaintiff **MARSHALL LOSKOT**, visited the
8 "HERITAGE INN" in Concord, Contra Costa County, California for the purpose of obtaining a
9 motel room. Defendants **PITAMBER RAMESH**, and **DOES ONE to FIFTY, inclusive**,
10 interfered with Plaintiff's access to the "HERITAGE INN" as set forth in Paragraph 3 above.

11 Said acts and omissions denied Plaintiff legal handicapped access to the "HERITAGE
12 INN" according to federal and state law.

13 12. Plaintiff encountered and/or is informed and believes that the following
14 architectural barriers, which violate the requirements of the **California Code of Regulations**
15 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those similarly
16 situated full and equal access to the subject public facility as set forth in Paragraph 3 above.

17 13. Defendants, and each of them, discriminated against Plaintiff **MARSHALL**
18 **LOSKOT** on the basis of his physical disability, and interfered with his access to the
19 "HERITAGE INN" establishment, in violation of both California law including, but not limited to,
20 **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of
21 Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision
22 of the **Americans with Disabilities Act of 1990**.

23 14. As a result of the actions and failure to act of defendants, and each of them, and
24 as a result of the failure to provide appropriate handicapped parking, proper handicapped
25 signage, proper handicapped accessible entryways, and handicapped accommodations for a
26 motel, Plaintiff **MARSHALL LOSKOT** suffered and will suffer a loss of his civil rights to full and
27 equal access to public facilities, and further suffered and will suffer emotional distress, mental
28 distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment,

anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction of this court.

I. FIRST CAUSE OF ACTION:

**VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990*
(42 USC §12101 et seq.)**

15. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 14 of this Complaint and incorporates them herein as if separately replied.

16. Pursuant to law, in 1990 the United States Congress made findings per 42 USC § 12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

17. Congress stated as its purpose in passing the ***Americans with Disabilities Act of 1990*** (42 USC § 12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

18. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services

1 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
 2 identified for purposes of this title were "an inn, hotel, motel, or other place of lodging, . . ."

3 19. Pursuant to 42 **USC** § 12182,

4 "No individual shall be discriminated against on the basis of disability in
 5 the full and equal enjoyment of the goods, services, facilities, privileges,
 6 advantages, or accommodations of any place of public accommodation by any
 7 person who owns, leases (or leases to), or operates a place of public
 8 accommodation."

9 20. Among the general prohibitions against discrimination were included in 42 **USC**
 10 §12182(b)(1)(A)(i):

11 **Denial of participation.** It shall be discriminatory to subject an individual
 12 or class of individuals on the basis of a disability or disabilities of such individual
 13 or class, directly, or through contractual, licensing, or other arrangements, to a
 14 denial of the opportunity of the individual or class to participate in or benefit from
 15 the goods, services, facilities, privileges, advantages, or accommodations of an
 16 entity.

17 21. Among the general prohibitions against discrimination were included in 42 **USC**
 18 §12182(b)(1)(E):

19 **Association --** It shall be discriminatory to exclude or otherwise deny
 20 equal goods, services, facilities, privileges, advantages, accommodations, or
 21 other opportunities to an individual or entity because of the known disability of an
 22 individual with whom the individual or entity is known to have a relationship or
 23 association.

24 The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA,
 25 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 *et seq.*

26 22. Among the general prohibitions against discrimination were included in 42 **USC**
 27 § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

28 **Discrimination.** For purposes of subsection (a), discrimination includes -

(i) the imposition or application of eligibility criteria that screen out or tend
 29 to screen out an individual with a disability or any class of individuals with
 30 disabilities from fully and equally enjoying any goods, services, facilities,
 31 privileges, advantages, or accommodations, unless such criteria can be shown to
 32 be necessary for the provision of the goods, services, facilities, privileges,
 33 advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or
 34 procedures, when such modifications are necessary to afford such goods,

1 services, facilities, privileges, advantages, or accommodations to individuals with
 2 disabilities, unless the entity can demonstrate that making such modifications
 3 would fundamentally alter the nature of such goods, services, facilities,
 4 privileges, advantages, or accommodations.

5 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
 6 and procedure for entry to the "**HERITAGE INN**" facility by persons with disabilities and their
 7 companions as established by the defendants can be simply modified to eliminate disparate
 8 and discriminatory treatment of persons with disabilities by properly constructing barrier free
 9 handicapped access for safe and full and equal enjoyment of the "**HERITAGE INN**" as that
 10 enjoyed by other people.

11 24. The specific prohibition against retaliation and coercion is included in the
 12 **Americans With Disabilities Act of 1990** § 503(b) and the *Remedies and Procedures* in §
 13 503(c):

14 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce,
 15 intimidate, threaten, or interfere with any individual in the exercise or enjoyment
 16 of, or on account of his or her having exercised or enjoyed, or on account of his
 17 or her having aided or encouraged any other individual in the exercise or
 18 enjoyment of, any right granted or protected by this Act.

19 (c) Remedies and Procedure. - The remedies and procedures available
 20 under sections 107, 203, and 308 of this Act shall be available to aggrieved
 21 persons for violations of subsections (a) and (b), with respect to Title I, Title II
 22 and Title III, respectively.

23 25. Among the specific prohibitions against discrimination were included, in 42 **USC**
 24 § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers
 25 that are structural in nature, in existing facilities...where such removal is readily achievable;"
 26 and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not
 27 readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or
 28 accommodations available through alternative methods if such methods are readily
 achievable." The acts of Defendants set forth herein were a violations of Plaintiff's rights under
 the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36,
 et seq.

29 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
 30 were at all times after 1990 "readily achievable." On information and belief, if the removal of all

1 the barriers complained of here together were not "readily achievable," the removal of each
 2 individual barrier complained of herein was "readily achievable."

3 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily
 4 accomplishable and able to be carried out without much difficulty or expense." The statute and
 5 attendant regulations define relative "expense" in relation to the total financial resources of the
 6 entities involved, including any "parent" companies. Plaintiff alleges that properly repairing
 7 each of the items that Plaintiff complains of herein is readily achievable, including, but not
 8 limited to, correcting and repairing the items set forth in Paragraph 3 above.

9 The changes needed to remove barriers to access for the disabled were and are
 10 "readily achievable" by the defendants under standards set forth under 42 **USC** § 12181 of the
 11 **Americans with Disabilities Act of 1990**. (Further, if it was not "readily achievable" for
 12 defendants to remove all such barriers, defendants have failed to make the required services
 13 available through alternative methods, although such methods are achievable as required by
 14 42 **USC** §12181(b)(2)(a)(iv), (v).)

15 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
 16 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil Rights**
 17 **Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to discrimination
 18 on the basis of disability in violation of this title and/or Plaintiff has reasonable grounds for
 19 believing that he is about to be subjected to discrimination in violation of **Americans With**
 20 **Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the public facilities
 21 complained of herein for the purpose of entry and provision of goods and service so long as
 22 defendants continue to apply eligibility criteria, policies, practices and procedures to screen out
 23 and refuse to allow entry and service to persons with disabilities such as Plaintiff's.

24 29. Defendants', and each of their acts and omissions of failing to provide barrier free
 25 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation
 26 pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** § 12203):

27 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
 28 individual in the exercise or enjoyment of, or on account of his or her having
 aided or encouraged any other individual in the exercise or enjoyment of, any

right granted or protected by this Act.

1 30. Per ***Americans With Disabilities Act of 1990*** § 308(a)(1) (now 42 **USC** §
 2 12188), “Nothing in this section shall require a person with a disability to engage in a futile
 3 gesture if such person has actual notice that a person or organization covered by this title does
 4 not intend to comply with its provisions.” Pursuant to this last section, Plaintiff, on information
 5 and belief, alleges that defendants have continued to violate the law and deny the rights of
 6 Plaintiff and other disabled persons to access this public accommodation for the purpose of
 7 obtaining lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),
 8

9 “...Where appropriate, injunctive relief shall also include requiring the
 10 provision of an auxiliary aid or service, modifications of a policy, or provision of
 11 alternative methods, to the extent required by this title.”

12 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the ***Civil Rights***
 13 ***Act of 1964*** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to implement
 14 the ***Americans with Disabilities Act of 1990***, including, but not limited to, an order granting
 15 injunctive relief and attorneys’ fees. Such attorneys’ fees, “including litigation expenses and
 16 costs,” are further specifically provided for by §505 of Title III.

17 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

18 **II. SECOND CAUSE OF ACTION**

19 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL
 20 DISABILITIES (***California Health & Safety Code*** § 19955, et seq.)

21 32. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 22 the allegations contained in paragraphs 1 through 31 of this Complaint and incorporate them
 23 herein as if separately replied.

24 33. ***California Health & Safety Code*** § 19955 provides in pertinent part:

25 The purpose of this part is to insure that public accommodations or
 26 facilities constructed in this state with private funds adhere to the provisions of
 27 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
 28 *Government Code*. For the purposes of this part “public accommodation or
 facilities” means a building, structure, facility, complex, or improved area which is
 used by the general public and shall include auditoriums, hospitals, theaters,
 restaurants, hotels, motels, stadiums, and convention centers. When sanitary
 facilities are made available for the public, clients or employees in such
 accommodations or facilities, they shall be made available for the handicapped.

1 34. **California Health & Safety Code** § 19956, which appears in the same chapter
2 as §19955, provides in pertinent part, “accommodations constructed in this state shall conform
3 to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
4 **Government Code...**” **California Health & Safety Code** § 19956 was operative July 1, 1970,
5 and is applicable to all public accommodations constructed or altered after that date. On
6 information and belief, portions of “**HERITAGE INN**” and/or of its buildings, were constructed
7 and/or altered after July 1, 1970, and substantial portions of said building had alterations,
8 structural repairs, and/or additions made to such public accommodations after July 1, 1970,
9 thereby requiring said public accommodations and/or buildings to be subject to the
10 requirements of Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, upon such
11 alteration, structural repairs or additions per **California Health & Safety Code** § 19959.

12 35. Pursuant to the authority delegated by **California Government Code** § 4450, *et*
13 *seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
14 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
15 California State Architect’s Regulations and these regulations must be complied with as to any
16 alterations and/or modifications of the “**HERITAGE INN**” occurring after that date.
17 Construction changes occurring prior to this date but after July 1, 1970 triggered access
18 requirements pursuant to the “ASA” requirements, the **American Standards Association**
19 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
20 modification of said building, all buildings and facilities covered were required to conform to
21 each of the standards and specifications described in the **American Standards Association**
22 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**,
23 (now known as Title 24, **California Code of Regulations**.)

24 36. Public facilities, such as “**HERITAGE INN**” are public accommodations or
25 facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

26 37. It is difficult or impossible for persons with physical disabilities who use
27 wheelchairs, canes, walkers and service animals to travel about in public to use a motel with
28 the defects set forth in Paragraph 3 above as required by Title 24 of the **California Code of**

1 **Regulations** and the **Americans with Disabilities Act Access Guidelines (ADAAG)**. Thus,
2 when public accommodations fail to provide handicap accessible public facilities, persons with
3 physical disabilities are unable to enter and use said facilities, and are denied full and equal
4 access to and use of that facility that is enjoyed by other members of the general public.

5 38. Plaintiff **MARSHALL LOSKOT** and other similarly situated persons with physical
6 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
7 service animals are unable to use public facilities on a "full and equal" basis unless each such
8 facility is in compliance with the provisions of the **California Health & Safety Code** § 19955,
9 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the
10 provisions of **California Health & Safety Code** § 19955, *et seq.*

11 39. The **California Health & Safety Code** was enacted "[t]o ensure that public
12 accommodations or facilities constructed in this state with private funds adhere to the
13 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
14 *Code*." Such public accommodations are defined to include motels.

15 40. Plaintiff is further informed and believes that as of the date of filing this
16 Complaint, Defendants have not made accessible the facilities at the subject motel as set forth
17 in Paragraph 3 above.

18 41. Plaintiff **MARSHALL LOSKOT** is informed and believes, and therefore alleges,
19 that Defendants **PITAMBER RAMESH, and DOES ONE to FIFTY, inclusive**, and each of
20 them, caused the subject buildings constituting "**HERITAGE INN**" to be constructed, altered
21 and maintained in such a manner that persons with physical disabilities were denied full and
22 equal access to, within and throughout said buildings and were denied full and equal use of
23 said public facilities, and despite knowledge and actual and constructive notice to such
24 Defendants that the configuration of the motel and/or buildings was in violation of the civil
25 rights of persons with physical disabilities, such as Plaintiff. Such construction, modification,
26 ownership, operation, maintenance and practices of such public facilities are in violation of law
27 as stated in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the
28 laws of California.

1 42. On information and belief, the subject building constituting the public facilities of
 2 "HERITAGE INN" denied full and equal access to Plaintiff and other persons with physical
 3 disabilities in other respects due to non-compliance with requirement of Title 24 of the
 4 ***California Code of Regulations*** and ***California Health & Safety Code*** § 19955, et seq.

5 43. The basis of Plaintiff's aforementioned information and belief is the various
 6 means upon which Defendants must have acquired such knowledge, including, but not limited
 7 to, this lawsuit, other access lawsuits, communications with operators of other motels and
 8 other property owners regarding denial access, communications with Plaintiff and other
 9 persons with disabilities, communications with other patrons who regularly visit there,
 10 communications with owners of other businesses, notices and advisories they obtained from
 11 governmental agencies through the mails, at seminars, posted bulletins, television, radio,
 12 public service announcements, or upon modification, improvement, alteration or substantial
 13 repair of the subject premises and other properties owned by these Defendants, newspaper
 14 articles and trade publications regarding the ***Americans with Disabilities Act of 1990*** and
 15 other access law, and other similar information. The scope and means of the knowledge of
 16 each defendant is within each defendant's exclusive control and cannot be ascertained except
 17 through discovery.

18 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
 19 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
 20 enforce provisions of the law protecting access for persons with physical disabilities and
 21 prohibiting discrimination against persons with physical disabilities, and to take such action
 22 both in his own interests and in order to enforce an important right affecting the public interest.
 23 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys' fees
 24 incurred, pursuant to the provisions of the ***California Code of Civil Procedure*** § 1021.5.
 25 Plaintiff additionally seeks attorneys' fees pursuant to ***California Health & Safety Code*** §
 26 19953 and ***California Civil Code*** §§ 54.3 and 55.

27 45. Defendants, and each of them, at times prior to and including May 10-11, 2006,
 28 and continuing to the present time, knew that persons with physical disabilities were denied

1 their rights of equal access to all portions of this public facility. Despite such knowledge,
2 Defendants failed and refused to take steps to comply with the applicable access statutes; and
3 despite knowledge of the resulting problems and denial of civil rights thereby suffered by
4 Plaintiff **MARSHALL LOSKOT** and other similarly situated persons with disabilities, including
5 the specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and
6 refused to take action to grant full and equal access to persons with physical disabilities in the
7 respects complained of hereinabove. Defendants and each of them have carried out a course
8 of conduct of refusing to respond to, or correct complaints about, denial of handicap access.
9 Such actions and continuing course of conduct by Defendants, evidence despicable conduct in
10 conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,
11 justifying an award of treble damages pursuant to **California Civil Code** § 54.3.

12 46. Defendants' actions have also been oppressive to persons with physical
13 disabilities and of other members of the public, and have evidenced actual or implied malicious
14 intent toward those members of the public, such as Plaintiff and other persons with physical
15 disabilities who have been denied the proper access they are entitled to by law. Further,
16 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable
17 conduct in conscious disregard for the rights of Plaintiff and other members of the public with
18 physical disabilities.

19 47. Plaintiff prays for an award of treble damages against Defendants, and each of
20 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more
21 profound example of Defendants and discourage owners, operators, franchisers and
22 franchisees of other public facilities from willful disregard of the rights of persons with physical
23 disabilities.

24 48. As a result of the actions and failure of Defendants, and each of them, and as a
25 result of the failure to provide proper accessible public facilities, Plaintiff **MARSHALL LOSKOT**
26 was denied his civil rights, including his right to full and equal access to public facilities, was
27 embarrassed and humiliated, suffered physical, psychological and mental injuries and
28 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,

humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation.

WHEREFORE, Plaintiff prays for damages as hereinafter stated.

III. THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS (*California Civil Code* §§ 54, 54.1 and 54.3)

49. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 48 of this Complaint and incorporates them herein as if separately replied.

50. The public facilities above-described constitute public facilities and public accommodations within the meaning of ***California Health & Safety Code*** § 19955 *et seq.* and were facilities to which members of the public are invited. The aforementioned acts and omissions of defendants, and each of them, constitute a denial of equal access to and use and enjoyment of these facilities by persons with disabilities, including Plaintiff **MARSHALL LOSKOT**. Said acts and omissions are also in violation of provisions of Title 24 of the ***California Code of Regulations***.

51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and the denial by defendants of such rights and entitlements are set forth in **California Civil Code** §§ 54, 54.1 and 54.3, to wit:

Individuals with disabilities shall have the same right as the...general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. ***California Civil Code § 54(a).***

Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. **California Civil Code § 54.1(a).**

1 52. On or about May 10-11, 2006, Plaintiff **MARSHALL LOSKOT** suffered violations
2 of **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
3 goods, services, facilities and privileges of said **HERITAGE INN**, as set forth in paragraph 3
4 above.

5 Plaintiff was also denied full and equal access to other particulars, including, but not
6 limited to, those described hereinabove. Plaintiff was also denied use of facilities that he was
7 entitled to under Title III of the **Americans with Disabilities Act of 1990**.

8 53. As a result of the denial of full and equal enjoyment of the goods, services,
9 facilities and privileges of defendants' **HERITAGE INN** due to the acts and omissions of
10 defendants, and each of them, in owning, operating and maintaining this subject public facility,
11 Plaintiff suffered violations of his civil rights, including, but not limited to, rights under
12 **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury, emotional
13 distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation,
14 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
15 associated with a disabled person's denial of full and equal enjoyment of goods, services,
16 privileges, etc. all to his damages as prayed hereinafter in an amount within the jurisdiction of
17 the court. Defendants' actions and omissions to act constituted discrimination against Plaintiff
18 on the sole basis that Plaintiff was physically disabled.

19 54. Plaintiff seeks damages for the violation of his rights as a disabled person on or
20 about May 10-11, 2006, according to proof, pursuant to **California Civil Code** § 54.3,
21 including a trebling of all statutory and actual damages, general and special, available pursuant
22 to **California Civil Code** § 54.3(a).

23 55. As a result of defendants' acts and omissions in this regard, Plaintiff **MARSHALL**
24 **LOSKOT** has been required to incur legal expenses and hire attorneys in order to enforce his
25 rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
26 services, facilities, privileges of public facilities by the disabled, and those individuals
27 associated with or accompanied by a person with disabilities, and prohibiting discrimination
28 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable

1 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 55. Additionally,
2 Plaintiff's lawsuit is intended not only to obtain compensation for damages to Plaintiff, but also
3 to compel the defendants to make their goods, services, facilities and privileges available and
4 accessible to all members of the public with physical disabilities, justifying public interest
5 attorneys' fees pursuant to the provisions of **California Code of Civil Procedure** § 1021.5.

6 56. The acts and omissions of defendants in failing to provide the required
7 accessible facilities subsequent to the enactment date and compliance date of the **Americans**
8 **with Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its
9 handicapped parking, handicapped signage, pathways, and other elements as hereinabove
10 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries,
11 on or about May 10-11, 2006, and all times prior thereto with the knowledge that persons with
12 disabilities would enter defendants' premises, the reason given therefor, was an established
13 policy, practice and procedure of refusing and denying entry, thereby denying services to a
14 person with disabilities and the companions thereof, evidence malice and oppression toward
15 Plaintiff and other disabled persons.

16 57. Plaintiff seeks injunctive relief pursuant to **California Civil Code** § 55 to require
17 Defendants to comply with federal and state access regulations.

18 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice
19 and procedure for entry into said "**HERITAGE INN**" as hereinabove described.

20 59. As a result of defendants' continuing failure to provide for the full and equal
21 enjoyment of goods, services, facilities and privileges of said "**HERITAGE INN**" as hereinabove
22 described, Plaintiff has continually been denied his rights to full and equal enjoyment of the
23 subject motel, as it would be a "futile gesture" to attempt to patronize said "**HERITAGE INN**"
24 with the discriminatory policy in place as hereinabove described.

25 60. The acts and omissions of defendants as complained of herein in failing to
26 provide the required accessible facilities subsequent to the enactment date and compliance
27 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
28 modifications and alterations to the architectural barriers as stated herein and in failing to

1 establish practices, policies and procedures to allow safe access by persons who are disabled
 2 are continuing on a day-to-day basis to have the effect of wrongfully and willfully excluding
 3 Plaintiff and other members of the public who are physically disabled, from full and equal
 4 enjoyment of the subject "**HERITAGE INN**" as hereinabove described. Such acts and
 5 omissions are the continuing cause of humiliation and mental and emotional suffering of
 6 Plaintiff in that these actions continue to treat Plaintiff as an inferior and second class citizen
 7 and serve to discriminate against him on the sole basis that he is physically disabled. Plaintiff
 8 is unable, so long as such acts and omissions of defendants continue, to achieve full and
 9 equal enjoyment of the goods and services of said "**HERITAGE INN**" as described
 10 hereinabove. The acts of defendants have legally caused and will continue to cause
 11 irreparable injury to Plaintiff if not enjoined by this court.

12 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
 13 continuing refusal by defendants to permit entry to said "**HERITAGE INN**" and to serve Plaintiff
 14 or others similarly situated, and to require defendants to comply forthwith with the applicable
 15 statutory requirements relating to the full and equal enjoyment of goods and services as
 16 described hereinabove for disabled persons. Such injunctive relief is provided by **California**
 17 **Civil Code** § 55. Plaintiff further requests that the court award statutory costs and attorneys'
 18 fees to Plaintiff pursuant to **California Civil Code** § 55 and **California Code of Civil**
 19 **Procedure** § 1021.5, all as hereinafter prayed for.

20 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
 21 and costs of suit, as allowed by statute and according to proof.

22 **IV. FOURTH CAUSE OF ACTION**

23 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***
 (California Civil Code §§ 51 and 51.5)

24 62. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 25 the allegations contained in paragraphs 1 through 61 of this Complaint and incorporates them
 26 herein as if separately replied.

27 63. Defendants' acts and omissions as specified with regard to the discriminatory
 28 treatment of Plaintiff **MARSHALL LOSKOT** on the basis of his physical disabilities, have been

1 in violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
 2 denied to Plaintiff his rights to “full and equal accommodations, advantages, facilities,
 3 privileges or services in all business establishments of every kind whatsoever.”

4 64. **California Civil Code** § 51 also provides that “[a] violation of the right of any
 5 individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall also
 6 constitute a violation of this section.”

7 65. **California Civil Code** § 51.5 also provides that

8 “[n]o business establishment of any kind whatsoever shall discriminate against,
 9 boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this
 10 state because of the race, creed, religion, color, national origin, sex, disability of
 11 the person or of the person’s partners, members, stockholders, directors,
 officers, managers, superintendents, agents, employees, business associates,
 suppliers, or customers.”

12 66. As a result of the violation of Plaintiff’s civil rights protected by **California Civil**
 13 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** §
 14 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean
 15 “special and general damages”), as well as reasonable attorneys’ fees and costs, as allowed
 16 by statute, according to proof.

17 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
 18 follows:

19 PRAYER FOR RELIEF

20 Plaintiff prays that this court award damages and provide relief as follows:

21 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
 22 criteria policy, practice and procedure permitting entry into the **HERITAGE INN** in Concord,
 23 Contra Costa County, California, for the purpose of obtaining the goods and services accorded
 24 therein according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and
 25 Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring
 26 that Defendants repair and render safe to handicapped persons, and otherwise make
 27 handicapped-accessible, all public areas of the motel, including, but not limited to, each of the
 28 barriers to access identified in Paragraph 3, above, and make such facilities “readily accessible

to and usable by individuals with disabilities," according to the standards of Title 24 of the **California Administrative Code, California Health & Safety Code** § 19955 et seq., and Title III of the **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting operation of the **HERITAGE INN**, located in Concord, Contra Costa County, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to physically disabled persons, including Plaintiff;

2. General damages according to proof;

3. Statutory and "actual" damages, including general damages and special damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that these damages be trebled;

4. Prejudgment interest on all compensatory damages;

5. Remedies and Procedures available under ***Americans with Disabilities Act of 1990*** §§ 107, 203 and 308;

6. Award Plaintiff all litigation expenses, all costs of this proceeding and all reasonable attorneys' fees as provided by law, including, but not limited to, those recoverable pursuant to the provisions of ***California Civil Code*** §§ 52, 54.3, and 55, ***California Code of Civil Procedure*** § 1021.5, and ***Americans with Disabilities Act of 1990*** §308 of Title III; and

7. Grant such other and further relief as the court may deem just and proper.

SINGLETON LAW GROUP

Dated: December 29, 2006 /s/Jason K. Singleton
Jason K. Singleton, Attorney for Plaintiff, MARSHALL LOSKOT

REQUEST FOR JURY TRIAL

Plaintiff hereby requests a jury for all claims for which a jury is permitted.

SINGLETON LAW GROUP

Dated: December 29, 2006 /s/ Jason K. Singleton
Jason K. Singleton, Attorney for Plaintiff, **MARSHALL LOSKOT**